

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

VICKI JOHNSON,

Case No. 2:18-cv-01987-APG-GWF

**Plaintiff,**

## ORDER

NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,  
Defendants.

13 This matter is before the Court on Plaintiff's Application to Proceed In Forma Pauperis  
14 (ECF No. 1), filed on October 15, 2018.

## BACKGROUND

Plaintiff alleges a claim against the Social Security Administration (SSA). Plaintiff appears to challenge its denial of social security benefits. Plaintiff appears to allege that the Social Security Commissioner denied her social security benefits and now seeks judicial review of that decision.

## **DISCUSSION**

## 20 || I. Application to Proceed *In Forma Pauperis*

Plaintiff filed this instant action and attached a financial affidavit to her application and complaint as required by 28 U.S.C. § 1915(a). Having reviewed Plaintiff's financial affidavit pursuant to 28 U.S.C. § 1915, the Court finds that Plaintiff is unable to pre-pay the filing fee. Therefore, Plaintiff's request to proceed *in forma pauperis* in federal court is granted.

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1           **II. Complaint**

2           Upon granting a request to proceed *in forma pauperis*, a court must additionally screen  
3 complaint pursuant to 28 U.S.C. § 1915(e). Specifically, federal courts are given the authority to  
4 dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which  
5 relief may be granted, or seeks monetary relief from a defendant/third party plaintiff who is  
6 immune from such relief. 28 U.S.C. § 1915(e)(2). A complaint, or portion thereof, should be  
7 dismissed for failure to state a claim upon which relief may be granted “if it appears beyond a  
8 doubt that the plaintiff can prove no set of facts in support of his claims that would entitle him to  
9 relief.” *Buckey v. Los Angeles*, 968 F.2d 791, 794 (9th Cir. 1992). When a court dismisses a  
10 complaint under § 1915(e), the plaintiff should be given leave to amend the complaint with  
11 directions as to curing its deficiencies, unless it is clear from the face of the complaint that the  
12 deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106  
13 (9th Cir. 1995).

14           To satisfy the screening requirements with respect to social security appeals, a plaintiff  
15 must set forth the following: (1) the plaintiff must establish that she has exhausted her  
16 administrative remedies pursuant to 42 U.S.C. § 405(g), and that the civil action was commenced  
17 within sixty days after notice of a final decision; (2) the complaint must indicate the judicial  
18 district in which the plaintiff resides; (3) the complaint must state the nature of the plaintiff's  
19 disability and when the plaintiff claims she became disabled; and (4) the complaint must contain  
20 a plain, short, and concise statement identifying the nature of the plaintiff's disagreement with  
21 the determination made by the Social Security Administration and show that the plaintiff is  
22 entitled to relief. *Montoya v. Colvin*, 2016 WL 890922, at \*2 (D. Nev. Mar. 8, 2016) (citing  
23 *Soete v. Colvin*, 2013 WL 5947231, \*2 (D. Nev. Nov. 4, 2013); *Pitcher v. Astrue*, 2012 WL  
24 3780354, \*1 (D. Nev. Aug. 30, 2012)).

25           Plaintiff's complaint is insufficient. Plaintiff does not allege that she exhausted her  
26 administrative remedies, timely commenced this case, or that she resides in this judicial district.  
27 Although Plaintiff attached documents that appear to relate to her medical conditions, she does  
28 not state the nature of her disability clearly or when it commenced. Further, Plaintiff does not

1 provide any allegations as to why the Social Security Administration's determination denying  
2 her benefits is wrong. The plaintiff must provide a statement identifying the basis of the  
3 plaintiff's disagreement with the Social Security Administration's determination and must make a  
4 showing that the plaintiff is entitled to relief.

5 The Court will, therefore, grant Plaintiff leave to amend her complaint. If Plaintiff elects  
6 to proceed in this action by filing an amended complaint, she is informed that the court cannot  
7 refer to a prior pleading in order to make her amended complaint complete. Local Rule 15-1  
8 requires that an amended complaint be complete in itself without reference to any prior pleading.  
9 This is because, as a general rule, an amended complaint supersedes the original complaint. *See*  
10 *Valdez-Lopez v. Chertoff*, 656 F.3d 851, 857 (9th Cir. 2011); *see Loux v. Rhay*, 375 F.2d 55, 57  
11 (9th Cir.1967). Once Plaintiff files an amended complaint, the original pleading no longer serves  
12 any function in the case. Plaintiff is advised that litigation will not commence upon the filing of  
13 an amended complaint. Rather, the Court will need to conduct an additional screening of the  
14 amended complaint pursuant to 28 U.S.C. § 1915(e). If Plaintiff fails to file an amended  
15 complaint or fails to cure the deficiencies identified above, the Court will recommend that the  
16 complaint be dismissed with prejudice. Plaintiff shall have until **November 16, 2018** to file an  
17 amended complaint correcting the noted deficiencies. Accordingly,

18 **IT IS HEREBY ORDERED** that Plaintiff's Application to Proceed *In Forma Pauperis*  
19 (ECF No. 1) is **granted**. Plaintiff shall not be required to pre-pay the full filing fee of four  
20 hundred dollars (\$400.00).

21 **IT IS FURTHER ORDERED** that Plaintiff is permitted to maintain this action to  
22 conclusion without the necessity of prepayment of any additional fees or costs or the giving of  
23 security therefor. This Order granting leave to proceed *in forma pauperis* shall not extend to the  
24 issuance of subpoenas at government expense

25 **IT IS FURTHER ORDERED** that the Clerk of the Court shall file the Complaint (ECF  
26 No. 1-1).

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1           **IT IS FURTHER ORDERED** that the Complaint (ECF No. 1-1) is **DISMISSED** with  
2 leave to amend. Plaintiff shall have until **November 16, 2018** to file an amended complaint  
3 correcting the noted deficiencies.

4 Dated this 17th day of October, 2018.

*George Foley Jr.*  
GEORGE FOLEY, JR.  
UNITED STATES MAGISTRATE JUDGE